IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9241 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALUBEN B BHEDA

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 9241 of 1997

MR PH PATHAK for Petitioner No. 1

MR AT DESAI, AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/01/2005

ORAL JUDGEMENT

#. Heard learned advocate Mr.Pathak on behalf of

petitioner, Mr.H.S.Munshaw, learned advocate appearing for respondent No.2 and Mr.Desai, learned Assistant Government Pleader, for respondent No.1.

#. Short grievance of the petitioner is that the benefit of Government Resolution dated 17.10.1988 has been extended in favour of petitioner by order dated 30.11.1990 which is at page 17, Annexure-B to the petition, with effect from 1.10.1988. Said benefit was enjoyed by petitioner for more than seven years and by order dated 28.11.1997, said benefit has been withdrawn by respondent which is at page 19, Annexure-C to the petition, wherein, name of petitioner appears at page 20.

#. Shri Pathak, learned advocate for the petitioner, submits that once the benefit has been extended in favour of petitioner with effect from 1.10.1988 and the same was enjoyed by her for more than seven years, then without giving any opportunity to the petitioner, straightway, this benefit could not have been withdrawn and therefore, it is violative of principles of natural justice. Reply filed by respondent-authority also does not dispute these facts, namely, of granting benefit and withdrawing the same. It is also an undisputed fact that the respondent No.2 has not given any opportunity to the petitioner before passing adverse order dated 28.11.1997. It is settled principle of law that if the authority is required to pass any adverse order which has any adverse civil consequences, then opportunity of hearing must be given to the concerned employee who is going to be adversely affected by such order. In this case, by way of withdrawing the benefit, salary of the petitioner has been reduced. Therefore, before passing such order, it was the duty of the respondent No.2 to give reasonable opportunity to the petitioner and then to pass appropriate order after hearing the petitioner. Looking to the facts on record, it is not in dispute that no opportunity was given to the petitioner before passing the order dated 28.11.1997. Therefore, order dated 28.11.1997 is contrary to the principles of natural justice and therefore, same is required to be quashed and set aside. It is made clear that this Court has not considered the merits or entitlement of the petitioner for the benefit of Government Resolution dated 17.10.1988. In view of these facts, the order passed by respondent-authority dated 28.11.1997, qua the petitioner, is hereby quashed and set aside. Rule is made absolute in terms aforesaid with no order as to cots.

(H.K.RATHOD, J.)

(sunil)